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No. 90-180

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

IRWIN COOPER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, THE DEPARTMENT OF VETERANS AFFAIRS and EDWARD J. DERWINSKI, SECRETARY OF VETERANS AFFAIRS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION BY VETERANS DUE PROCESS, INC., ACCOMPANIED BY THE WRITTEN CONSENT OF ALL PARTIES, FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER; AND BRIEF, SUBMITTED PRIOR TO CONSIDERATION OF THE PETITION FOR WRIT OF CERTIORARI.

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INTEREST OF AMICUS

Both parties have consented to the filing of this amicus brief by Veterans Due Process, Inc. ("VDP") in support of petitioner.

VDP is a recognized **"national leader"**[1] in the field of veterans rights, and is dedicated to the implementation of our American ideal of equal justice under law and in advancing the "Rule of Law" for veterans, concerning their dealings with the VA. VDP is an Oregon based Non-Profit Veterans Rights Corporation, organized, in part, for the following purposes, as quoted from the 1982 Articles of Incorporation:

1. To utilize all reasonable means of communication to inform the American people concerning the limitation of

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1 See: The Stars and Stripes, June 25, 1986, front page article.

the rights of veterans under present law in their dealings with the Veterans Administration, including but not limited to the unavailability of judicial review of agency decisions {see: 38 U.S.C. § 211(a) "no review" clause which crept into the law as a provision of the "Economy Act" of 1933}, and the effective denial of the rights to legal counsel by a limitation on attorney's fees in the sum of $10 in connection with proceedings before the Veterans Administration {see: 38 U.S.C. § 3404, 3405, as enacted into law during 1862, originally for $5}.

2. **To take whatever action as is reasonably and legally possible to terminate the denial of rights to veterans in their dealings with the Veterans Administration, which rights are available in**

dealing with other agencies of the United States Government.

Since 1983, VDP has been active on national, state and local levels, in examining the problem of lack of Due Process of Law for America's veterans and their families, and resultant VA abuses, which is, in part, the issue involved in this action. VDP has appeared before numerous Committees of the United States Senate and the United States House of Representatives, concerning various legislative proposals seeking to restore Constitutionally guaranteed "DUE PROCESS OF LAW" legal protections, to American citizens who have been injured defending the United States Constitution i.e. veterans. VDP has participated in national media activities i.e. CNN, ABC 20-20, CBS Investigations, etc.

Recently, VDP was instrumental in causing Congressional passage of the Veterans' Judicial Review Act, Pub. L. 100-687, November 18, 1988, (the "new law"), which Respondents agree **does not apply** to the case of Petitioner Irwin Cooper {nor to approximately 85% of other veterans}. In order to cause the passage of said new law, VDP continuously revealed the "TRUTH" to the Congress, media, and the American people, concerning the illegal and improper practices and operating procedures utilized by the VA for decades, and at issue in Petitioner's case.

VDP believes that it can offer some objective perspectives on the matter at issue, because VDP is one of the only unrestrained, **objective** advocates of veterans rights, by reason of the fact that unlike many of the major national

veterans organizations i.e. American Legion, Disabled American Veterans, Veterans of Foreign Wars, etc., VDP does not receive free office space, free telephone service, free office equipment, etc., from the VA pursuant to 38 U.S.C. §3402(a)(2). VDP has thus avoided the inherent "conflict of interest" which receipt of said federal "perks", invariably create for a veterans rights organization.

VDP is interested in this case because it is vitally concerned with the protection of the rights of veterans, the integrity of the VA administrative process, the observance of lawful procedures by the VA, and our belief in the role of the courts in seeing that the VA act within the bounds of law. The Petitioner's case provides a prime example of decades of VA "Due Process of law"

violations, which evidence that the VA denial of his claim, for decades, was not the considered judgment of an agency faithfully executing the laws of the United States, but rather the operation of a VA covert, clandestine, sub rosa, arbitrary and secret budgetary driven (not law, regulation or fact driven) quota system policy wherein the observance of procedural safeguards was an illusion i.e. the negation of a system.

SUMMARY OF ARGUMENT

Since its creation by Congress during 1930, the United States Veterans Administration has been a creature of "Economy", a concept often proven to be rationally at odds with the purposes of Veterans' benefits legislation.

The "no review" statute (38 U.S.C.§ 211(a)) which the Courts below erroneously concluded Petitioner was attempting to circumvent, by "casting his complaint as a constitutional claim", was a provision of the so-called "Economy Act" of 1933, a law passed during the Great Depression, a part of which was designed to give the VA absolute control and unrestricted discretion in the distribution of veterans benefits, and also unrestricted power in the administration of its programs. President Roosevelt had proclaimed a

"NATIONAL ECONOMIC EMERGENCY", which, in large part, caused the passage of the "Economy Act".

The "New Deal" philosophy of that era was abruptly rejected by the Supreme Court when it held the NRA unconstitutional in Schechter Poultry[2], wherein Justice Hughes declared:

> " . . . extraordinary conditions {the national economic emergency} do not create or enlarge constitutional power" and "is is enough to say that the **recuperative efforts of the federal government must be made in a manner consistent with the authority granted by the Constitution**."

Unfortunately for the Petitioner, the very same national economic emergency which

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2 A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935)

created the "Economy Act" and created the VA "no review" statute, was left intact regardless of Schechter, and continues to victimize veterans, including Petitioner, to this day. The VA no-review provision of the Veterans' Benefits Act (now 38 U.S.C. §211(a), survives as a monument to the discredited economic philosophy of that era.

It is a matter of Congressional Record[3] that the VA, dedicated to President Roosevelt's goad of "ECONOMY", attempted to reduce the service-connected disability compensation then going to World War 1 veterans, by more than 70%. VA hospital and medical services were to be cut by 80%. That same "Economy" mentality, ultimately gave birth to the VA covert

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3 Congressional Record, House,- June 15, 1933, page 6175, Representative Lundeen.

budgetary driven (as opposed to law, regulation and fact driven) quota system.

The Courts below, in dismissing Petitioner's allegations of **SERIOUS VIOLATIONS OF THE UNITED STATES CONSTITUTION by** the VA i.e. employing a covert budgetary driven "quota system" which arbitrarily limits the number of benefits claims granted, and caused Petitioner's VA claims to be denied for decades, ignored his constitutionally guaranteed right **"TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES"**[4], and also ignored his constitutionally guaranteed right to **"DUE PROCESS OF LAW"**[5].

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4 Constitution of the United States, Amendment 1.

5 Constitution of the United States, Amendment 5.

The Courts below also were in error in determining that Petitioner's complaint failed to state **ANY** valid claim for relief on **ANY**[6] **POSSIBLE** legal theory (Rule 12(b)(6), and in so doing, also ignored the time honored maxim of common law that **for every legal wrong there is a remedy.**[7]

The Courts below failed to recognize that one of the basic reasons why a motion to dismiss should be viewed with disfavor by federal courts, especially in a case wherein allegations of serious constitutional violations (budgetery

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6 See: Federal Practice and Procedure, Wright & Miller, West Publishing Co., Volume 5A, 1990, concerning Federal Rules of Civil Procedure Rule 12(b)(6), §1357 at 337.

7 Marbury v. Madison, 1 U.S. 368 at 378, 1 Cranch 137 (1803). The Court stated: **"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."**

driven quota system) exist, is because of the basic precept that the primary objective of the law is to obtain a determination of the merits of any claim; and that **a case should be tried on the proofs** rather than the pleadings.

The Courts below also failed to recognize that in the written **CONTRACT** relationship (Petitioner was not drafted) which Petitioner had with Respondent United States of America, that the failure of said Respondent to warn Petitioner concerning the factors which ultimately gave rise to this action, also give rise to a "quasi-contract" remedy[8].

The Courts below also failed to construe Petitioner's liberally as

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8 See: Corbin on Contracts, vol 1, 1990 Pocket Part, §§19 and 19A, concerning "Quasi-Contract", at 58, etc.

required by Rule 8, but instead construed it by the stricter "traditionally disfavored[9]" standard, because it attacked the constitutionality of the VA system.

The Courts below ignored the provision of the United States Constitution which provides that: **"THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF . . . SHALL BE THE SUPREME LAW OF THE LAND;**[10] on the basis of which, Chief Justice John Marshall reasoned in Marbury v. Madison[11] that the Constitution is law, that it is the duty of courts to interpret the law in

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9 See: Federal Practice and Procedure, Wright & Miller, West Publishing Co., Volume 5A, 1990, concerning Federal Rules of Civil Procedure Rule 12(b)(6), §1357, at 359.

10 Constitution of the United States, Article 6, Section 2.

11 Marbury v. Madison, 1 U.S. 368, 1 Cranch 137 (1803).

order to decide cases in accordance with it, and that therefore the Supreme Court had the authority and indeed was duty-bound to interpret the Constitution, and to prefer it to any other law {including Respondents cited legal authority in the instant action}.

Justice Marshall pointed out that the Constitution enjoins the courts to enforce as the supreme law of the land only those acts of Congress that are "in pursuance of the Constitution". Therefore, **the Court must first determine whether a law is in pursuance of the Constitution before it is entitled to enforce it as "law of the land."**

The Petitioner has alleged egregious violations of his constitutional right to "due process of law", but Respondents have cited an abundance of "law", Federal

Rules, and other "authority" which they would have the Court believe, supercede Petitioner's rights guaranteed to him by the United States Constitution.

Petitioner properly disagrees with all of Respondents cited "authority", which allegedly legalizes the serious constitutional violations i.e. the covert, sub-rosa VA budgetary driven quota system, employed by the VA for decades, to deny Petitioner's claim for VA benefits.

Contrary to Respondents belief, **THE UNITED STATES CONSTITUTION IS NOT VOID WHERE PROHIBITED BY LAW** i.e federal statutes or case law authority; nor is the VA above the law i.e. the United States Constitution.

The Courts below ignored the fact that the VA system is in violation of our

American system of "Separation of Powers", the central feature of which is the constitutional and political independence caused by the distribution of national powers among the legislative, executive and judicial branches. In 1788, founding father James Madison said:

> "No political truth is certainly of greater intrinsic value or is stamped with the authority of more **enlightened patrons of liberty** than that on which the objection is founded. **The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.**"[12]

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12 James Madison, Federalist, No. 47, 323-31, January 30, 1788.

Accordingly, the founding fathers took special precautions to isolate the judiciary from executive and legislative influence, in part because they were afraid that there might be times when Congress and the President {the "Economy Act"} might respond to political and social convulsions and act hastily and oppressively.

Petitioner Irwin Cooper's complaint, the proof of which is in his possession, establishes that the founding fathers fears were well founded. The VA "system" is the embodiment of what James Madison, and other Founders, feared, because it exercises legislative, executive and judicial functions, all combined into what has come to be known as the "odious 4th branch of government" i.e. ADMINISTRATIVE, which is a totally alien concept to the "separation of powers" principle which the

Petitioner defended during World War II. The Petitioner is entitled to relief by the judicial branch, under the standards of the American system of justice he defended.

On point concerning Petitioner's allegations of serious violations of the United States Constitution by Respondent VA, are the words of Thomas Jefferson, one of the Framers, when he said:

> " . . . it would be a dangerous delusion were a **confidence** in the men of our choice to silence our fears for **the safety of our rights**: that confidence is everywhere the parent of despotism--free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, **to bind down those whom we are**

> **obliged to trust with power**: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go . . . **In questions of power**, then, let no more be heard of confidence in man {to include VA bureaucrats}, but **bind him down from mischief by the CHAINS of the Constitution."**[13]

It is a well know fact to VDP and other objective veterans rights organizations not financially subsidized by the VA, that more than 60 years ago, Respondent VA slipped out of its "chains of the Constitution", and was no longer bound down from mischief. Petitioner Irwin Cooper is a victim of the "mischief" of

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13 Quoted in Alpheus T. Mason, **The Supreme Court: Palladium of Freedom** (Univ. of Michigan Press, 1962), p. 10.

that constitutionally unchecked power. A perfidious betrayal of Irwin Cooper's patriotism and sacrifice for America.

Years ago, Supreme Court Justice Story, was concerned about an attack on the integrity of the United States Constitution, and the rights and liberties of the American people. He envisioned such an attack as possibly being caused by "TEMPORARY PASSIONS AND INTERESTS OF THE DAY" and/or "TO GRATIFY THE AMBITION OF POLITICAL LEADERS". In regard to that concern, he said:

> "Where is controversy to end, if we desert both the letter and the spirit? What is to become of constitutions of government, if they are to rest, not upon the plain import of their words, but upon conjectural enlargements and restrictions, **to suit the temporary passions and interests of the**

> **day**? Let us never forget, that our constitutions of government are solemn instruments, addressed to the common sense of the people and **designed to fix, and perpetuate their rights and their liberties. They are not to be violated to gratify the ambition of political leaders**. They are to speak in the same voice now, and forever. They are no man's private interpretation. They are ordained by the will of the people; and can be changed only by the sovereign command of the people."[14]

The attack on the United States Constitution which concerned Justice Story, became a reality, and the present "legal" circumstance of Petitioner is the result.

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14 Commentaries, III, 754.

The Petitioner in this case is guilty only of honorable and patriotic military service to the United States of America. He is a victim of intense VA pressure to reduce expenditures, which decades ago caused the VA to adopt the covert budgetary driven quota system {PROCESS?}, on the basis of which his VA claim was denied, which arbitrarily denied him "due process of law".

Said "Quota System" has permitted the VA Administrator to reap a windfall economic benefit from the adoption of unlawful policies which were kept secret for decades, thus depriving the Petitioner (and thousands of our nation's defenders) the benefits to which they were and/or are entitled by law.

VDP urges the United States Supreme Court to at long last ignore the "ambition

of political leaders" and the "temporary passions and interests of the day", and place the Petitioner on the same legal footing as his fellow American Citizens, and permit him to prove that the Respondents did, in fact, seriously violate his constitutionally guaranteed rights. America's injured defenders should never have been stripped of the basic legal protections which they fought to preserve for every other American. Is nothing sacred?

ARGUMENT

I. THE COURTS BELOW FAILED IN THEIR DUTY TO EXAMINE PETITIONER'S ALLEGATIONS OF SERIOUS CONSTITUTIONAL VIOLATIONS, IN ORDER TO DETERMINE IF THE ALLEGATIONS PROVIDED FOR RELIEF ON **ANY POSSIBLE THEORY.**

The Courts below were under a duty to examine petitioner's allegations of serious constitutional violations, in order to determine if the allegations provided for relief on **ANY possible theory**, not only **the** legal theory on which the petitioner intended to proceed.

The Courts below, aware that a motion to dismiss for failure to state a claim (Rule 12(b)(6), is viewed with

disfavor and is rarely granted[15], and also aware of the basic precept that the primary objective of the law is to obtain a determination of the merits of any claim; and that **a case should be tried on the proofs[16] rather than the pleadings**, had a duty to construe Petitioner's complaint under the Rule 8 **liberal standard** which provides that a complaint need only set out **a generalized statement of facts** from which defendant will be able to frame a responsive pleading.

The petitioner's allegations that the VA violated the First and Fifth

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15 See: Federal Practice and Procedure, Wright & Miller, West Publishing Co., Volume 5A, 1990, concerning Federal Rules of Civil Procedure Rule 12(b)(6), §1357 at 321.

16 See: Federal Practice and Procedure, Wright & Miller, West Publishing Co., Volume 5A, 1990, concerning Federal Rules of Civil Procedure Rule 12(b)(6), §1357, at 325.

Amendments of the United States Constitution in his VA case, by employing a **covert, clandestine, sub rosa, secret** {so far as Petitioner and other veterans are concerned} **budgetary driven** {not law, regulation, or fact driven} **quota system**, in processing claims (the mere "**appearance**" of a legitimate process), which arbitrarily limits the number of VA benefits claims granted, and caused petitioner's VA claim for benefits to be wrongfully and illegally and unconstitutionally denied for decades, etc., is certainly of sufficient strength to survive a motion to dismiss for failure to state a claim, and does provide a basis under **ANY POSSIBLE** legal theory, for relief.

In Bell v. Hood[17], the Court said:

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17 Bell v. Hood, 327 U.S. 678 (1946)

"But as we have already pointed out, **the alleged violations of the Constitution here, are not immaterial, but form rather the sole basis of the relief sought.** Nor can we say that the cause of action alleged is so patently without merit as to justify even under the qualifications noted, the courts dismissal for want of jurisdiction. The Circuit Court of Appeals correctly stated that **the complaint states strong cases and if the allegations have any foundation in truth, the plaintiffs legal rights have been ruthlessly violated.**"

ARGUMENT

II. THE COURTS BELOW FAILED IN THEIR DUTY TO CONSTRUE

PETITIONER'S COMPLAINT BY THE RULE 8 LIBERAL STANDARD, BUT INSTEAD APPLIED A STRICTER STANDARD BASIS BECAUSE PETITIONER'S COMPLAINT AGAINST THE VETERANS ADMINISTRATION ("VA") SYSTEM, PRESENTED A **TRADITIONALLY DISFAVORED** "CAUSE OF ACTION"

The Courts below should have applied the usual liberal Rule 8 standard for construing petitioner's complaint, and assumed, for purposes of the motion to dismiss, that the petitioner's allegation that VA determinations of ineligibility in his VA case, were not the considered judgment of a Federal agency faithfully executing the laws of the United States, but that said VA determinations were the direct result of the alleged covert, clandestine, sub rosa and secret budgetary

driven VA "quota system", which simply ignored applicable VA laws, regulations, and the facts in petitioner's case, and thus violated Petitioner's constitutionally guaranteed right to due process of law. On that basis, the Courts below should have permitted the case to go forward, and be tried on the **proofs** rather than the pleadings

The extent to which cases concerning VA lawlessness (such as at issue in the instant action) are regarded by the Judicial Branch as being "DISFAVORED", is indicated by the fact that many cases such as Petitioner's, nationally, go routinely unreported. Many are stamped by the Courts: "will not be published in the federal reporter" or are marked "not appropriate for publication" and "may not be cited to or by the courts". Many such cases are sealed. Perhpas the most

significant indicator of the extent to which veterans cases against the VA are "disfavored" by the Judicial Branch, is the fact that, upon information in belief (and a LEXIS search of the national federal data base), approximately 120,000 such cases have dismissed from Federal Courts, since the VA judicial review preclusion statute was enacted into law as a result of the 1933 "Economy Act."

ARGUMENT

III. THE COURTS BELOW CONCLUDED, IN ERROR, THAT PETITIONER WAS ATTEMPTING TO CIRCUMVENT THE VA JUDICIAL REVIEW PRECLUSION (38 U.S.C. § 211(a)) **BY CASTING/CLOAKING HIS COMPLAINT AS A "CONSTITUTIONAL CLAIM**

ARISING OUT OF THE DENIAL OF BENEFITS".

Respondents assertion that Petitioner's allegations of serious constitutional violations, as being cloaked as such to avoid the VA judicial review preclusion statute, is a specious argument, which simply constitutes an attempt by Respondents to avoid the exposure and possible national scandal from a trial which which Respondents know (from a portion of Petitioner's proof already of record in this case) would likely result.

Such a specious argument has the potential of providing a means by which Respondents can, as in the case of the petitioner, easily violate the constitutional rights of any of its citizens by simply alleging, when confronted with **ANY** allegations of

serious constitutional violation(s), that said allegations are only "cast in the guise" of a constitutional claim, and on said basis, avoid the "proof" at trial, and simply obtain dismissal on "technical grounds".

There exists a terrible danger, that such an ruse could ultimately serve as a means to deny a forum to any and/or all American citizen **in which to pursue a claim that the United States Government seriously violated the Constitution**. Thus, **the most lawless acts of our government, in direct violation of the United States Constitution, could be immune from judicial proceedings and effective accountability**, creating a gross departure from our **government of laws** envisioned by the founding fathers.

The Courts below asked Petitioner to identify the VA due process violations acts in connection with the VA claim denial, in order for the Court to determine if said denials were of a constitutional nature as opposed to merely being poor procedure. Petitioner alleged to the Court that the VA does not follow its own laws, regulations, or apparent operating procedures, because the VA arbitrarily makes benefits decisions on the basis of a budgetary driven "quota system", which ignores the laws, regulations, facts and apparent operating procedures. The Court should have recognized that such a VA practice is not just "poor practice", but the arbitrary negation of the Veterans Benefits Act, VA Statutes, regulations, etc. In Bowen v City of New York[18], the Court found that

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18 Bowen v. City of New York, 476 U.S. 467 (1986).

the Social Security Administration's ("SSA") improper practice was "covert", "clandestine", "sub rosa", and "secret" so far as the claimants were concerned; this "covert policy" was followed consistently . . . that the disability benefit system was turned into "an adversarial trap in which the intended beneficiaries become the victims", and that the SSA claimants incorrectly believed "that their Government's determination of ineligibility was the considered judgment of an agency faithfully executing the laws of the United States". The Petitioner can prove that that the problems which gave rise to Bowen, were not as egregious as the result of the VA's covert budgetary driven quota system, which caused Petitioners VA claims to be denied for decades.

Finally, the covert VA "quota systems" goal of saving money is not

rationally related to the purposes of veterans' benefits legislation.

ARGUMENT

IV. IN THE ABSENSE OF ANY SPECIFIC WARNING TO PETITIONER TO THE CONTRARY DURING THE CREATION OF PETITIONER'S WRITTEN CONTRACT WITH RESPONDENT UNITED STATES OF AMERICA, SAID RESPONDENT SHOULD HAVE BEEN ESTOPPED FROM ASSERTING THE VA JUDICIAL REVIEW PRECLUSION STATUTE (38 U.S.C. § 211(A)) AS A DEFENSE. THE PETITIONER HAD A RIGHT TO KNOW, AND RESPONDENT, IN FULL POSSESSION OF THE FACTS DURING THE CONTRACT PROCESS, HAD AN AFFIRMATIVE DUTY TO WARN.

During World War II, petitioner entered into a formal written **CONTRACT** (not drafted) with Respondent United States of America, wherein he contracted to serve in the military service. Both parties to said contract were under an obligation of "good faith".

Requisite to said contract process, Petitioner was required to divulge all essential information required by the Respondent United States of America, in order for it to make an informed decision, as to whether or not he would be inducted.

Petitioner (and society in general) reasonably expected, and therefore assumed without question, that if he were injured while serving the United States of America, that he would receive, and have a **legal enforceable right** to, medical

care and/or disability compensation from the United States of America, for as long as necessary.

During said contract process, the petitioner had a right to know, and the Respondent United States of America, in full possession of the facts concerning the severe limitations which Respondents would impose on Petitioner's legal rights, were he to enter into said contract and ultimately become a veteran, failed in its affirmative **duty to warn** him that if he were injured while patriotically fulfilling his part of said contract, that contrary to his reasonable expectations, and the reasonable expectations of society in general, he would not have a **legal enforceable right** against Respondent United States of America, to compel it to provide necessary medical care, disability compensation, etc., concerning any

injuries which Petitioner might suffer fulfilling said contract.

Respondents also failed to warn Petitioner that he would **not**, as he reasonably expected, have a right to full "due process of law" legal protections guaranteed to every American citizen by the united states constitution i.e. full access to the American system of justice (access to the courts and the right to counsel), in order to enforce whatever such veterans benefits to which he ultimately could become entitled.

In the absence of any specific warning to Petitioner to the contrary, Respondents should have been estopped from asserting the VA judicial review preclusion statute (38 U.S.C. § 211(a) as a defense, nor should Petitioner's complaint have been disposed of on

"technical grounds" because it was construed under the stricter standard (as opposed to the Rule 8 liberal standard) of a "traditionally disfavored cause of action, created by the judicial review preclusion. Again, Petitioner had a right to know about the "judicial review" preclusion statute, when entering into his contract with Respondent United States of America, but said Respondent ignored its **DUTY TO WARN**.

Petitioner also reasonably expected that he would would have a legal enforceable right to the full protections of the United States Constitution i.e. full access to the American system of justice (access to the courts and the right to counsel), in order to enforce whatever veterans rights to which he ultimately could become entitled, as a result of his military service.

The United States Constitution and the demands of EQUITY and JUSTICE demand that Judicial relief be accorded the Petitioner.

ARGUMENT

V. THE COURTS BELOW FAILED TO CONSIDER A LAW IMPOSED **"QUASI-CONTRACT" REMEDY** IN THIS CASE, IN ORDER TO REACH A RESULT CONSISTENT WITH EQUITY AND JUSTICE.

The courts below failed to consider a law imposed **"quasi-contract" remedy** in this case, arising out of the failure of Respondent United States of America to warn/disclose to Petitioner during the creation of the written contract, that he would not, contrary to his reasonable

expectations (and that of society in general), have a legal **enforceable** {access to the Courts, right to counsel, protections of the Administrative Procedures Act ("APA"), etc} right to VA medical care, disability compensation, etc., concerning any injuries which he might suffer fulfilling his part of the contract.

Respondents violated its duty of "good faith" concerning its contract with Petitioner, causing the Petitioner unjust detriment, and creating an unjust state of affairs in this case. Said "state of affairs" demands that a result consistent with justice be reached, fully consistent with the reasonable expectations of petitioner and society.

Contrary to the reasonable expectations of both Petitioner and

society, concerning his formal written contract with Respondent United States of America, he was unjustly confronted with a VA system which not only seriously violated his constitutional rights i.e. employed a covert, clandestine, sub rosa and secret budgetary driven quota system policy in "processing" and denying his claim, which arbitrarily denied him due process of law, but in the process, subjected him, ironically, to a "system of justice" which was (and is) totally alien to the American system of justice which he served to protect.

Said acts on the part of Respondents created the very kind of injustice contemplated by a **"quasi-contract" remedy**. Respondents had a duty implied in law arising out of its contract with petitioner, and the unjust detriment to the petitioner, and unjust state of

affairs in this case, demands a judicial result consistent with equity and justice be reached in this case,

The Courts below should have determined that justice requires a "quasi-contract" remedy.

CONCLUSION

For the reasons stated in this brief and in the Petition for Writ of Certiorari, the writ should be granted, and the petitioner should be returned to the Southern District Court of New York, under another judge, to establish the validity of his allegations of serious constitutional violations by the VA.

Respectfully submitted,

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